



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,047	09/29/2003	John A. Kapeles	A0693.10U	2575

7590

03/01/2006

Thomas C. Saitta
Rogers Towers, P.A.
Suite 1500
1301 Riverplace Boulevard
Jacksonville, FL 32207

EXAMINER

CLEMENT, MICHELLE RENEE

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/674,047	KAPELES ET AL.	
	Examiner	Art Unit	
	Michelle (Shelley) Clement	3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-10,12-14,16,18-23,25-30 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 1,3,6-10,12 and 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14,16,18,23,25-30 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Group II in the reply filed on 12/14/15 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 1, 3, 6-10, 12 and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14, 16, 18-23 and 25-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barr et al. (US Patent # 3,911,824) and Klein (US Patent Application # 2004/0069177). Barr et al. discloses a non-lethal impact munition comprising a projectile comprising a projectile nose and a projectile base, the projectile separably joined to a propulsion shell comprising propulsion means to separate the projectile from the propulsion shell, the projectile nose composed of a frangible, rigid material characterized in that the projectile nose is

Art Unit: 3641

crushed upon impact with a target in a manner that absorbs and dissipates energy of impact, the projectile nose comprising a cavity, wherein the projectile nose has a rounded forward end and a cylindrical wall, the cylindrical wall being thinner than the forward end, such that the thinner cylindrical wall breaks prior to the forward end upon impact to absorb and dissipate impact energy. The munition comprising a payload disposed within the cavity, wherein the payload is laterally dispersed from the cavity upon impact through the thinner cylindrical wall. The payload including a finely divided particulate or powder such as tear gas powder. The projectile nose further comprising a rear plug wall joined to the cylindrical wall, the combination of the forward end, the cylindrical wall and the rear plug wall defining a nose cavity. Wherein the rear plug wall is joined to the projectile base. The projectile base comprises a forward wall joined to a cylindrical wall. The rear plug wall is joined to the forward wall of the projectile base. The propulsion shell comprising an annular forward wall having a forward shell rim, a shell base joined to the shell forward wall, and a propulsion cavity disposed in the shell base, the propulsion means being retained by the propulsion cavity, the projectile based comprising a forward wall joined to a cylindrical wall to define a projectile cavity and a rearward extending annular insertion flange, whereby the insertion flange is received within the shell rim and the shell forward wall such that the shell cavity and the projectile cavity are combined. The projectile nose is sufficiently rigid to maintain aerodynamic stability during flight but is sufficiently frangible to crush upon impact with a target in a manner that absorbs and dissipates energy of impact to reduce the energy transferred to such target by the projectile. Although Barr et al. does not expressly disclose the projectile nose composed of a polymer foam material, Klein does. Klein teaches a non-lethal projectile ammunition comprising a projectile comprising a

Art Unit: 3641

projectile nose composed from Styrofoam (i.e. polymer foam), a projectile base and a payload comprising a chemical agent mixed with a marking powder. Barr et al. and Klein are analogous art because they are from the same field of endeavor: non-lethal projectiles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the Styrofoam material for the nose as taught by Klein with the non-lethal projectile as taught by Barr et al. The suggestion/motivation for doing so would have been to obtain a non-lethal projectile that had adequate stiffness during flight as taught by Klein ¶ 49. Barr et al. and Klein disclose the claimed invention except for the foam material expressly having a density between approximately 8 and 14 pounds per cubic foot. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a foam material having the specific density, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 27 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barr (US Patent # 3,865,038), Barr et al. (US Patent # 3,911,824) and Klein (US Patent Application 2004/0069177). Barr discloses a non-lethal munition that can be carried and used in combination with a cartridge case carrying a propellant. The munition comprising a projectile comprising a projectile nose and a projectile base, the projectile base comprising a forward wall joined to a cylindrical wall to define a projectile cavity and a rearward extending annular insertion flange, whereby the insertion flange can be received within a shell rim, the projectile nose comprising a rear plug wall joined to a cylindrical wall and a forward end joined to the cylindrical wall, the combination of the forward end, the cylindrical wall and the rear plug

Art Unit: 3641

defining a nose cavity, the projectile nose composed of a frangible rigid material and a payload disposed within the cavity of the projectile nose, whereby the payload is laterally dispersed from the projectile nose upon impact. Wherein the rear wall of the projectile nose is joined directly to the forward wall of the projectile base. Although Barr does not expressly disclose the specific propulsion shell, Barr et al. does. Barr et al. teaches a non-lethal munition comprising a projectile and cartridge/propulsion shell, the propulsion shell comprising an annular forward wall having a forward shell rim, a shell base joined to the shell forward wall and a propulsion cavity disposed in the shell base, the propulsion means retained by the propulsion cavity, whereby a flange of the projectile is received within the shell rim. Barr and Barr et al. are analogous art because they are from the same field of endeavor: non-lethal munitions. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the cartridge as taught by Barr et al. with the projectile as taught by Barr. The suggestion/motivation for doing so can be found in the Abstract of Barr. Although neither Barr nor Barr et al. expressly disclose the projectile nose composed of a polymer foam material, Klein does. Klein teaches a non-lethal projectile ammunition comprising a projectile comprising a projectile nose composed from Styrofoam (i.e. polymer foam), a projectile base and a payload comprising a chemical agent mixed with a marking powder. Barr, Barr et al. and Klein are analogous art because they are from the same field of endeavor: non-lethal projectiles. It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the Styrofoam material for the nose as taught by Klein with the non-lethal projectile as taught by Barr and Barr et al. The suggestion/motivation for doing so would have been to obtain a non-lethal projectile that that had adequate stiffness during flight as taught by Klein ¶ 49

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brock et al. (US Patent Application # 2005/0229807) Abbot (US Patent # 3,776,137) and Grinberg (US Patent # 5,009,164).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


MICHELLE CLEMENT
PRIMARY EXAMINER